

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION**

EDMUNDO R. ROSALES, )  
                          )  
                          )  
Movant,               )                      Case No. 06-0342-CV-W-DW-P  
                          )  
v.                     )  
                          )  
UNITED STATES OF AMERICA, )  
                          )  
                          )  
Respondent.           )

**ORDER**

Before the Court is Movant Edmundo R. Rosales's motion for post-conviction relief under 28 U.S.C. § 2255 (Doc. 1). The motion is denied.

Rosales pleaded guilty to conspiracy to distribute cocaine. His conviction and sentence were affirmed on direct appeal. See United States v. Rosales, 111 Fed. Appx. 857 (8th Cir. 2004) (enforcing appeal waiver); United States v. Rosales, 132 Fed. Appx. 71 (8th Cir. 2005) (sentence not unreasonable under Booker), cert. denied, 126 S.Ct. 1443 (2006).

The Court has thoroughly reviewed the briefing on the motion, and finds that Rosales's allegations are without merit. No hearing is necessary because the issues are clearly resolvable by the record. The government's response (Doc. 6) sets forth legal analysis of the issues, which this Court adopts. Rosales's first argument relates to calculation of drug quantities for sentencing. The Court of Appeals decided the issue on direct appeal, and Rosales waived the right to collaterally attack the sentence. His second argument is that the government refused to seek a downward departure because of his race and nationality. This argument was not preserved on appeal, and Rosales makes no showing whatever of cause or prejudice. Therefore, the

unconstitutional motives argument fails as well.

Upon review of the motion, the Court concludes that Rosales has not made a substantial showing of the denial of a constitutional right such that the issues presented are debatable among jurists of reason. See Randolph v. Kemna, 276 F.3d 401, 403 n.1 (8th Cir. 2002); 28 U.S.C. § 2253(c)(2). Therefore, the Court denies a certificate of appealability.

It is hereby

ORDERED that Rosales's section 2255 motion (Doc. 1) is DENIED. Further, the Court DECLINES to issue a certificate of appealability on any of the claims raised in the motion.

SO ORDERED.

/s/ DEAN WHIPPLE  
Dean Whipple  
United States District Judge

Date: July 18, 2006